

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PATENT COOPERATION TREATY

Rec'd PCT TO 21 DEC 2004

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PCT

To:

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WRITTEN OPINION
(PCT Rule 66)

Date of mailing
(day/month/year) 5 FEB 2004

Applicant's or agent's file reference
p21480pcau

REPLY DUE within **TWO MONTHS**
from the above date of mailing

International Application No.

PCT/AU2003/000762

International Filing Date (day/month/year)

19 June 2003

Priority Date (day/month/year)

21 June 2002

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ A23K 1/14, 1/18

Applicant

MARS INCORPORATED et al

1. This written opinion is the **first** drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
II ☐ Priority
III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV ☐ Lack of unity of invention
V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI ☐ Certain documents cited
VII ☐ Certain defects in the international application
VIII ☐ Certain observations on the international application

3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
21 October 2004

4. The applicant is hereby invited to reply to this opinion.

When? See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

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Authorized Officer

JAMIE TURNER

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I. Basis of the opinion**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-7, 10-16	YES
	Claims 8-9	NO
Inventive step (IS)	Claims 1-7, 10-16	YES
	Claims 8-9	NO
Industrial applicability (IA)	Claims 1-16	YES
	Claims	NO

2. Citations and explanations

The following documents, first raised in the corresponding International Search Report, are referred to as follows:

- D1 - US 4 514 094 (See Example XXVI)
 D2 - US 4 514 431 (See Example XXVI) } 200:1 → 90:1
 D3 - US 4 081 565 (See column 8, paragraph 4; Examples XIII and XXIV)
 D4 - US 4 076 852 (See column 9, paragraph 1; Example L) } 540:1

The invention the subject of the present claims relates to a vegetarian pet food comprising a non-meat based flavour-enhancing additive which includes hydrolyzed vegetable protein and xylose, wherein the ratio of hydrolyzed vegetable protein to xylose is between 15:1 and 40:1 (claim 1). It further relates to a flavour-enhancing additive for pet foods comprising hydrolyzed vegetable protein and xylose, wherein the ratio of hydrolyzed vegetable protein to xylose is between 15:1 and 40:1 (claims 8-9).

None of the above cited art relates to a vegetarian pet food as claimed in claim 1. Hence, claim 1 and claims appended thereto are considered novel. It is evident that the claims could not be considered obvious when compared with any of these documents, either alone or in combination. Hence, claim 1 and claims appended thereto are considered to fulfil the requirements of inventive step as well.

Each of documents D1-D4, however, do disclose flavour additives comprising both hydrolyzed vegetable protein and xylose in the requisite proportions. While these flavour additives are not designed for use as vegetarian pet food flavour additives, they could, nevertheless, fulfil this role. Hence, the flavour additives disclosed in D1-D4 are considered to be prejudicial to both the novelty and inventive step of claims to the pet food flavouring additive, namely claims 8-9.